

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

United States District Court  
Southern District of Texas  
ENTERED

JUN 26 2000

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT OPPORTUNITY §  
COMMISSION,

Plaintiff,

vs.

NATIONWIDE HOUSING SYSTEMS, INC. §

Defendant. §

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16.

CIVIL ACTION NO. C-00-125

**ORDER**

On this day came on to be heard Plaintiff's Motion for Reinstatement. For the reasons discussed herein, the Court GRANTS Plaintiff's Motion. The Court further ORDERS that the Joint Discovery/Case Management Plan is due on or before July 5, 2000.

**I. JURISDICTION**

This Court has federal question jurisdiction, 28 U.S.C. § 1331, over this action brought under the Age Discrimination in Employment Act, 29 U.S.C. § 626.

**II. FACTS**

On May 24, 2000, this Court attempted to hold the initial pre-trial conference in the above-styled action. Neither party appeared, and the Court dismissed the action for want of prosecution. (Order of Dismissal, D.E. #5). Plaintiff filed a

Motion to Reinstate on June 2, 2000.

### **III. DISCUSSION**

A motion to reinstate filed within ten days of judgment may be construed as a motion under Fed.R.Civ.P. 59(e). See Lindsey v. U.S. Railroad Retirement Board, 101 F.3d 444 (5<sup>th</sup> Cir. 1996); Long v. Simmons, 77 F.3d 878, 879 (5<sup>th</sup> Cir. 1996). There are four grounds upon which a Court may grant such a motion: (1) the movant demonstrates the motion is necessary to correct manifest errors of law or fact upon which the judgment is based, (2) the moving party presents new evidence, (3) the motion is necessary to prevent manifest injustice, or (4) the motion is justified by an intervening change in controlling law. Waltman v. International Paper Co., 875 F.2d 468, 473-74 (5<sup>th</sup> Cir. 1989).

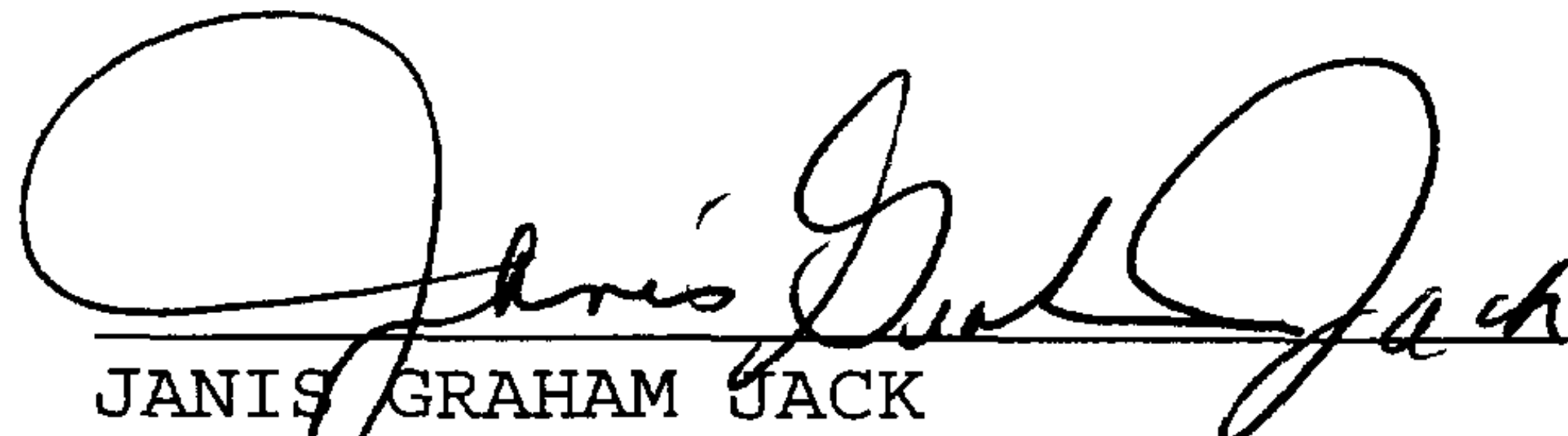
In this case, Court finds that it was a manifest error of law to dismiss the action with prejudice for want of prosecution. "[A]bsent a convincing record of dilatoriness or contumaciousness, it [is] an abuse of the trial court's discretion to impose the ultimately harsh sanction of dismissal with prejudice, without having first employed lesser sanctions." Silas v. Sears, Roebuck & Company, Inc., 586 F.2d 382 (5<sup>th</sup> Cir. 1978); see also Graves v. Kaiser Aluminum & Chem. Co., 528 F.2d 1360 (5<sup>th</sup> Cir. 1976). The Court finds that the record does not

show a sufficient degree of dilatoriness or contumaciousness to warrant a dismissal with prejudice.

**IV. CONCLUSION**

For the foregoing reasons, the Court GRANTS Plaintiff's Motion to Reinstate.

ENTERED on this the 22<sup>nd</sup> day of April, 2000.

  
JANIS GRAHAM JACK  
UNITED STATES DISTRICT JUDGE